

**New Mexico Off Highway Vehicle Alliance
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Albuquerque, NM 87123**



Elaine Kohrman, Forest Supervisor
Cibola National Forest
2113 Osuna Road NE
Albuquerque, NM 87113

September 15, 2015

Dear Supervisor Kohrman,

I am submitting these comments on the Draft Desired Conditions for the resources, goods, and services provided by the Cibola National Forest and National Grasslands on behalf of the New Mexico Off Highway Vehicle Alliance (NMOHVA). NMOHVA is a statewide nonprofit alliance of motorized off-highway vehicle enthusiasts and local organizations. Our mission is promoting, protecting, and preserving responsible OHV recreation through education, safety training, and responsible land use ethics. We cooperate with public and private interests to protect and preserve public land access and work to ensure a positive future for OHV recreation in New Mexico. NMOHVA represents motorized recreationists in New Mexico including 4WD enthusiasts, dirt bike riders, and ATV/UTV users. The Cibola National Forest (CNF) subject to this Forest Plan revision process provides important recreational resources to the members of the public we represent.

Our over-riding thought on the Desired Conditions is that they fall short of adequately addressing our concerns addressed in our Scoping comments already submitted:

“The Forest Service continues to underserve the growing demand for OHV recreation in the area. Continuing to follow the current course of action will further exacerbate crowding on the remaining trails as motorized recreation continues to grow. The Forest needs additional motorized trails open to meet this growing need. The revised Forest Plan needs clear plan for how it will identify, track, measure, and respond to growing motorized user needs.”¹

The text of the Desired Conditions does specifically address trail-based motorized recreation under Desired Conditions for General Recreation:

¹ Scoping comments submitted by NMOHVA dated 3/19/15

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“The Cibola National Forest welcomes a diverse group of visitors by providing a variety of developed and dispersed recreation and tourism opportunities (e.g. camping, picnicking, hiking, mountain biking, hunting, fishing, wildlife viewing, driving for pleasure, and so forth) that are appropriate for the recreation setting and other resource values.”²

The list of examples should include “motorized recreation” or “trail-based motorized recreation” in the same specific manner as was used for “hiking” and “mountain biking”.

The same is true for the Desired Conditions under Dispersed Recreation. The draft document states:

“Dispersed recreation is outdoor recreation occurring over broad expanses of the Cibola National Forest and includes management of a variety of motorized and non-motorized recreation opportunities. Examples of popular dispersed recreation include trail use, dispersed camping, wildlife viewing, hunting, fishing, plant gathering, and photography.”³

The agency may argue that trail based motorized recreation is included under “trail use”. We assert that given the Cibola’s history of ignoring the management of motorized trail use until the recent Travel Management Rule implementation, it is necessary to specifically call out this specific recreation niche in the Desired Conditions to ensure that the motorized recreation user segment is served going forward.

The same is true of the Desired Conditions – Motorized Recreation. The draft documents states:

“Opportunities for off-highway vehicle (OHV) riding, driving for pleasure, motorized dispersed camping and motorized big game retrieval are provided on the designated system of NFS roads and motorized trails in accordance with the motor vehicle use maps (MVUMs). Visitors understand and comply with the designations shown on the MVUMs.”⁴

While a small start, we do not believe that the draft document provides enough information on how the agency determines the amount of trail based motorized recreation opportunities that are appropriate. Contrast the MVUM statement above with the Desired Condition statement taken from the Non-Motorized Recreation section:

² Draft Forest-wide Ecological and Socioeconomic Desired Conditions, p 71

³ Draft Forest-wide Ecological and Socioeconomic Desired Conditions, p 72

⁴ Draft Forest-wide Ecological and Socioeconomic Desired Conditions, p 73

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“The non-motorized trail system accommodates use levels compatible with other resource values and is consistent with public demand.”⁵

The Motorized Recreation section includes no similar statement defining that the agency needs to meet demand requirements in a compatible trail system. We desire specific wording added that to this section that addresses:

1. Providing adequate trails to meet the need of increased public participation in motorized trail use.
2. How the agency will assess whether the public’s need for trail based motorized recreation opportunities is being met.

We are also submitting additional comments on the process of identifying and inventorying remote areas of the Cibola that may be potentially suitable for wilderness based on the Supervisor’s Letter dated July 15th:

“Also at these public meetings, we will show you where we are in the process of identifying and inventorying remote areas of the Cibola that may be potentially suitable for wilderness, and how you can participate in the evaluation of these areas over the course of the summer.”

We assert that Chapter 70 of the Planning Rule Directives are illegal because they violate the Wilderness Act:

“...and no Federal lands shall be designated as "wilderness areas" except as provided for in this Act or by a subsequent Act.”⁶

Yet the Planning Directives allow the Forest Service a wide range of management options for recommended wilderness, up to, and including managing the area as if it were already designated wilderness (emphasis added):

*“When developing plan components for recommended wilderness areas, **the Responsible Official has discretion to implement a range of management options**. All plan components applicable to a recommended area **must protect and maintain the social and ecological characteristics that provide the basis for wilderness recommendation**. In addition, the plan may include one or more plan components for a recommended wilderness area that:*

- 1. **Enhance the ecological and social characteristics that provide the basis for wilderness designations;***
- 2. Continue existing uses, only if such uses do not prevent the protection and maintenance of the social and ecological characteristics that provide the basis for wilderness designation;*
- 3. **Alter existing uses**, subject to valid existing rights; or*

⁵ Draft Forest-wide Ecological and Socioeconomic Desired Conditions, p 73

⁶ 16 USC 1131(a)

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4. Eliminate existing uses, except those uses subject to valid existing rights.”⁷

In fact, the Planning Directives instruct the Responsible Official to:

“The Responsible Official should strive to maintain consistency with the provisions of 16 USC 1133(d) and the content of FSM 1923.03(3) when developing plan components for the management of recommended wilderness areas.”⁸

And what is contained in 16 USC 1133(d)? All of the special provisions for managing designated Wilderness. And FSM 1923.03(3) states:

“Any area recommended for wilderness or wilderness study designation is not available for any use or activity that may reduce the wilderness potential of an area.”

The current 2012 Planning Rule Directives instruct the Forest Service to manage areas recommended for wilderness as if Congress has already designated those areas as Wilderness.

Congress has not delegated Wilderness decision making to Forest Service. In fact, it has specifically retained that right only for itself:

“...and no Federal lands shall be designated as "wilderness areas" except as provided for in this Act or by a subsequent Act.”

We assert that management of an area as wilderness prior to it being “designated” as wilderness is illegal and definitely not in accord with the intent of Congress.

All of this (and more) was submitted to Secretary of the Department of Agriculture and the Chief of the Forest Service as a Petition for Rulemaking by NMOHVA in March of this year. While our request for rulemaking was denied, we cannot yet challenge the denial in court as there has not been any “harm” suffered (unsuitable lands being managed as Wilderness while waiting for Congressional action).

As the Cibola National Forest is farther along in its Plan revision than the other New Mexico forests, it is highly probable that any inappropriate lands nominated for inclusion in the Wilderness system by the CNF will provide the required “harm” necessary for us to challenge Chapter 70 and its illegal application in court.

⁷ FSH1909.12, Section 74.1

⁸ FSH1909.12, Section 74.1

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I have attached our Rulemaking Petition as an Appendix for review. Its purpose is instruction for the Cibola National Forest to avoid any illegal application of the Planning Rule Directives and subsequent legal challenge.

Thank you for the opportunity to comment.

Sincerely,



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